STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,049

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Appeal of)

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INTRODUCTION

The petitioners (hereinafter referred to as Mr. and Mrs. S.) appeal the decision by the Department of Social Welfare denying their application for food stamps. The issue is whether a hunting camp owned in the petitioners' names constitutes a resource to the petitioners within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioners are Abenaki Indians who live in Swanton, Vermont. Mr. S. is considered to be the Chief of the tribe.

On April 1, 1993, Mrs. S. came to the Department's district office to apply for food stamps. In filling out her written application with a Department caseworker Mrs. S. indicated, in response to the question: "Does anyone who wants assistance own any land, buildings, or trailers other than your own home?", that she and her husband owned a "hunting camp" in Berkshire, Vt. with an assessed value of $11,000. The caseworker who was interviewing Mrs. S. then wrote on the application:

Asked Mrs. (S.) if the camp belonged to anyone else she said no, they she and Mr. (S.) were the only owners; also asked if it belonged to the Abenaki's she stated no (sic).

Based on the above information the Department determined that the petitioners' resources were in excess of the program maximum ($2,000), and it denied the petitioners' application for food stamps.

At the hearing in this matter (held on July 29, 1993) Mr. S. maintained (Mrs. S. did not appear at the hearing) that he and his wife purchased the land (10.3 acres with a camp and toolshed) some years earlier in order to "reclaim" it for the Abenaki tribe. He stated that the tribe uses the land for meetings and ceremonies, and that the tribe considers it sacred. He also stated that it will never be sold because it belongs to the tribe as a whole, and that his and his wife's names are on the deed only to comply with

"white man's law."

At and following the hearing the petitioners submitted written legal arguments that the property must be considered either "Indian land" that, as a matter of law, is held in right and title by the Abenaki tribe, or land "encumbered" by the laws and traditions of the tribe, and, therefore, of no value to the petitioners personally. Following his initial examination of the evidence, arguments, and caselaw, the hearing officer notified the parties that he was unpersuaded, as a matter of law, that the property could be considered "Indian lands"; but that it was possible, as a matter of fact, that the property could be considered "not accessible" to the petitioners based on tribal law and custom. However, because certain evidence reflecting adversely on the credibility of their claim regarding the "ownership" of the property (i.e., Mrs. S.'s statements to the worker at the time of application, supra) had not been addressed in detail at the hearing,(1) the hearing officer offered the petitioners the opportunity to submit further testimony in the matter. The hearing officer also reiterated to the petitioners his concern that their refusal to simply, at this time, transfer the legal title to the property into the tribe's name (a matter discussed at length between the hearing officer and the attorneys prior to the hearing) also reflected negatively on their credibility.

When the petitioners declined the opportunity to testify further, claiming health reasons, the hearing officer advised them again of his concerns regarding their refusal to transfer the property to the tribe. In response, Mr. S. submitted the following Affidavit:

1. I, [petitioner], am Chief of the Sovereign Republic of the Abenaki Nation and represent the interests of the Nation in various respects including disputes concerning land ownership.

2. I and my wife, [name], are considered to be owners of property in Berkshire, Vermont under the laws of the State of Vermont, however, under federal and international law, the Abenaki nation retains unextinguished aboriginal title and right of occupancy of our ancestral homelands, including the relevant property in Berkshire, Vermont. These aboriginal title and rights are recognized by Vermont courts as evidenced by the decision of the late Judge Wolchik in State v. Harold St. Francis, a copy of which has been provided to the Vermont Department of Human Services.

3. Under Abenaki national customs, traditions and laws, the property held under Vermont deed by myself and my wife [name] cannot be sold or alienated from the Abenaki Nation because of its importance as a cultural, religious and political site.

4. The Abenaki Nation does not require that the Vermont deed to the instant property be transferred to the name of the Abenaki Nation in order for our national laws, customs and traditions to apply to the land. To the contrary, based on the Wolchik decision, supra, and the theory of Aboriginal title and rights, Vermont deeds to the property are illegal and irrelevant for purposes of Abenaki rights over this property.

5. As I am Chief of the Abenaki Nation, it is understood that my ownership of this property carries with it the responsibility to abide by our traditions, laws and customs regarding alienation. These customs, traditions and laws must be respected by myself and by the State of Vermont and the federal government regarding eligibility for food stamps.

6. My wife and I believe that it is unnecessary and disrespectful of Abenaki laws, traditions and customs

for the State of Vermont to require us to transfer this land in order for the Department of Human Services to recognize the uncontested restrictions over this property which decrease its fair market value to a de minimis amount.

7. What the Human Services Board seems to consider a "seemingly simple and reasonable legal step", ie. the transfer of the property into the name of the Abenaki Nation, is considered an acknowledgement that the State of Vermont does not have to respect our laws, traditions and customs and such an act on our part is considered an unnecessary abandonment of Abenaki laws, traditions and customs simply to satisfy the Board when the Board should not be requesting, nor requiring, such an action on our behalf.

8. In so far as this affidavit is based on information and belief, I believe it to be true.

Following the submission of the above Affidavit, the hearing officer, still concerned that the petitioners did not understand that the primary issue, in his mind, was not the legitimacy of Abenaki laws and customs but rather the petitioners' personal credibility, met with the attorneys to reiterate his view of the case. At that meeting the petitioners' attorney informed the hearing officer that the petitioners understood the problem but had nonetheless chosen to stand by their prior testimony and legal arguments in the matter.(2)

Mrs, S. (despite being given the opportunity, as well as the specific reasons why it would be in her interest do so) did not appear at any time to testify regarding what she told the Department at the time she applied for food stamps. Unfortunately, Mr. S.--notwithstanding his apparent status in the Abenaki tribe--was not deemed to be a credible witness in the couple's behalf. His demeanor at the hearing was blustering and disdainful, and he came across as a hubristic and self-important individual. While he is undoubtedly committed to obtaining respect and recognition for his tribe, his stated position regarding the property at issue in this matter appears to be plainly inconsistent with that end.

Mr. S.'s stated reasons (see Affidavit, supra) for refusing to consider deeding the property over to the tribe

--e.g., that "Vermont deeds to the property are illegal and irrelevant for purposes of Abenaki rights over this property"--are self-serving to the point of solipsism. It ignores the reality that any "rights" the tribe may have to the land are, if anything, compromised by the fact that in its present status it could be lost to the tribe entirely because of debts, liabilities, or tax delinquencies incurred solely by the petitioners as individuals. By the petitioners' own admission, the "encumbrances" claimed by them would apply only to Abenakis--not to any creditor or bona fide purchaser who might take "legal title" to the property under the above scenario.(3) Whether or not the petitioners or other tribe members might recognize and respect the loss of the property under such circumstances, there is no question that under Vermont law they would be powerless to stop it. Therefore, far from being "irrelevant", the petitioners' refusal to consider deeding the property over to the tribe appears to be directly contrary to any right or interest the tribe might have in the land. This simply undermines the credibility of the petitioners' assertion that the property in question is for the exclusive use and benefit of the Abenaki tribe as a whole.

Notwithstanding the hearing officer's recognition of and respect for the customs, traditions, and historical plight of the Abenaki tribe, it is found that these petitioners' claims regarding this particular piece of property are simply not credible. In light of the information (supra) given to the Department by Mrs. S. when she applied for benefits, Mr. S.'s overall lack of credibility, and the inexplicable refusal of

the petitioners to deed the property over to the tribe, it cannot be found that the petitioners have effectively and sincerely disclaimed and forsaken their personal financial interest in the property in question.

ORDER

The Department's decision is affirmed.

REASONS

There appears to be no dispute in this matter that the property in question has an assessed value of $11,000, which is well in excess of the food stamp program resource maximum of $2,000. Food Stamp Manual (F.S.M.) § 273.8(b).

F.S.M. § 273.8(c) defines "resources" to include the following:

2. Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property provided that these resources are not specifically excluded under paragraph (e) of this section. . .

The list of excluded resources under F.S.M. § 273.8(e) includes the following provisions:

8. Resources having a cash value which is not accessible to the household. . .

. . .

10. Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs. . .

Turning first to the question of whether the property in question must be considered "Indian lands", the Vermont Supreme Court, in State v. Elliott et al., 3 Vt. Law Wk. 226 (June 12, 1992), in reversing a lower court decision dismissing charges of fishing without a license against a group of Abenakis, held that all "aboriginal rights" claimed by Abenakis to land in Vermont had been "extinguished". It appears that the petitioners herein attempt to distinguish Elliott (and argue that the lower court decision overruled by Elliott is still binding precedent--although that decision, State v. St. Francis, Vt. Dist. Ct., Franklin Cir., No. 89-483,[(4)] made no mention of private property held in deed by individual Abenakis) by virtue of the Elliott Court's description of the lands in question in that case being "...the area now known as St. Albans, Highgate, and Swanton..." The petitioners' property is in Berkshire, Vt. Thus, the petitioner's argue, Elliott is inapplicable.

In reading the Elliott decision, however, it must be concluded that this distinction is wholly untenable. The Supreme Court was obviously referring simply to the area that was specifically at issue in those cases. To argue that the Elliott decision leaves open the question of Abenaki aboriginal rights to Vermont land not in those three towns simply ignores the inescapably clear, if harsh, holding of that opinion--that Abenakis have no legally cognizable aboriginal rights to land in Vermont.

The petitioners' other legal arguments are on firmer footing--unfortunately, the facts don't support them.

The Board agrees with the petitioners that the Elliott and St. Francis decisions, supra, recognize the "tribal status" of Abenakis. It appears clear from those decisions that the Abenakis have identifiable laws, traditions, and customs that are entitled to deference and respect--certainly, at least, to the extent that they do not conflict with federal and state laws. Therefore, if the petitioners could convincingly demonstrate that, as a matter of tribal law and custom, they are prohibited from selling, or otherwise personally gaining, from their legal title to the property in question, it could be concluded that the property is not

"accessible" to them within the meaning of the food stamp regulations, supra.

As noted above, however, based on the evidence presented it cannot be found that the petitioners herein are so prohibited. The petitioners presented no law, and the Board knows of none, that requires the Board to apply Abenaki laws and customs, or to believe that the petitioners herein would necessarily follow them, simply because the petitioners are members of the Abenaki tribe. As noted above, Mrs. S. when she applied for food stamps specifically told the Department that the property belonged to her and her husband--not to the tribe. In light of Mrs. S.'s absence from these proceedings, the believability of Mr. S.'s admittedly-plausible, but nonetheless-dubious, assertion that his wife was referring only to "legal title" to the land rests entirely upon his credibility as an individual. As noted above, Mr. S., despite his apparent status in the tribe, simply did not strike the hearing officer as being credible in this regard.

Based on the foregoing findings and conclusions, the property in question cannot be considered either "Indian lands" or "having a cash value which is not accessible to the household" within the meaning of §§ 273.8(e)(8) and (10), supra. Therefore, the Department's decision in this matter is affirmed. 3 V.S.A. § 3091(d) and Food Stamp Fair Hearing Rule No. 17.

1. At the hearing the Department made an uncontroverted oral representation as to Mrs. S's statements at the time she applied for benefits, but the parties agreed that the Department could submit its written evidence when it filed its legal memorandum in the matter.

2. The members of the board have been provided with a packet containing the written arguments submitted by the parties, the Elliott decision (see infra), and the above-referenced correspondence between the hearing officer and the parties' attorneys.

3. The petitioners' attorney represented that he specifically advised the petitioners in this regard.

4. The District Court decision in St. Francis is ninety-six pages long. Because of this, and because it was effectively overturned on appeal by Elliott, it was not included in the board's packet (see Footnote 2, supra).